Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

JOYCE A. GILCHRIST, Petitioner,

v.

BOARD OF REVIEW OF THE OKLAHOMA EMPLOYMENT SECURITY COMMISSION, THE OKLAHOMA SECURITY COMMISSION, AND THE CITY OF OKLAHOMA CITY, Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a State violates a person's First Amendment rights when it deprives that person of a state benefit because the person testified as an expert witness in State Criminal trials, and those expert opinions were criticized.

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PETITION FOR A WRIT OF CERTIORARI

Melvin C. Hall, counsel of record; and Gisele K. Perryman, assisting on the filings and briefs, on behalf of Petitioner, Joyce A. Gilchrist, respectfully petition for a Writ of Certiorari to review the judgment of the Supreme Court of the State of Oklahoma.

OPINION BELOW

The opinion of the Supreme Court of the State of Oklahoma is reported at *Gilchrist v. Board of Review of the Oklahoma Employment Security Comm'n*, 94 P.3d 72, 2004 OK 47.

JURISDICTION

The judgment of the Supreme Court of Oklahoma was entered on June 15, 2004. The jurisdiction of this Court is invoked under 28 U.S.C.§ 1257.

CONSTITUTIONAL PROVISION INVOLVED

1. The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

* * * * *

STATEMENT

This case involves the application of the First Amendment right to testify as an expert witness in State criminal trials; and whether a State violates a person's First Amendment rights when it deprives that person of a state benefit because the person testified as an expert witness in State Criminal trials, and those expert opinions were criticized.

Petitioner, Joyce Gilchrist, worked for the City of Oklahoma City Police Department (OCPD) as a forensic chemist for many years. Petitioner was responsible for collecting and analyzing evidence from crime scenes and testifying as to the results in criminal prosecutions. Petitioner was terminated in 2001, in part based on United States Western District of Oklahoma Judge Ralph Thompson's published opinion in a *habeas corpus* proceeding, *Mitchell v. Ward*, 150 F. Supp. 2d 1194 (W.D. Okla. 1999). The issues before Judge Thompson arose from a criminal matter tried in the District Court of Oklahoma County in which Petitioner had testified for the prosecution as an expert witness. Based on his analysis of the evidence developed in the *habeas corpus* matter, Judge Thompson concluded that Petitioner's testimony in the 1992 criminal trial concerning DNA evidence had been, "without question untrue," 150 F. Supp. 2d at 1226, and "terribly misleading, if not false," 150 F. Supp. 2d at 1229. Petitioner was then terminated for her expert witness testimony. Petitioner filed a claim with the Oklahoma Employment Securities Commission (OESC) seeking unemployment benefits. On October 15, 2001, the OESC denied Petitioner's claim based on the OESC's conclusion that Petitioner had been fired for misconduct. On October 25, 2001, Petitioner appealed to an Appeal Tribunal of the OESC. On December 12, 2001, a hearing was held before an Appeal Tribunal hearing officer, who affirmed the OESC's determination on February 4, 2002.

Petitioner appealed from the Appeal Tribunal's order and on April 26, 2002, the OESC Board of Review affirmed. Petitioner filed her petition for judicial review in the District Court of Oklahoma County on May 7, 2002. The trial court affirmed the opinion of the Board of Review on October 29, 2002. Petitioner appealed the District Court's affirmation to the Oklahoma Supreme Court on November 13, 2002. On June 15, 2004, the Oklahoma Supreme Court issued its final decision, affirming the Oklahoma County District Court's opinion.

Petitioner's speech in the form of expert witness testimony encompassed a matter of public concern.

> The function of witnesses is fundamental to the administration of justice. The court's judgment is based on [witnesses'] testimony and they are given every encouragement to make a full disclosure of all pertinent information within their knowledge. ... "[E]very consideration of public policy requires that they should be as fearless in testifying as the judge and jury are independent in weighting their testimony."

Williams v. Hepting, 844 F.2d 138, 141 (3rd Cir. 1988), *quoting Brawer v. Horowitz*, 535 F.2d 830, 837 (3rd Cir. 1976). "In order to encourage truthful and uninhibited testimony, the law has long afforded certain protections to witnesses." *Worrell v. Henry*, 219 F.3d 1197, 1204 (10th Cir. 2000). "Under common law, witnesses were immune from suit for damages for testifying in judicial proceedings." *Worrell*, 219 F.3d at 1204, *citing Briscoe v. LaHue*, 460 U.S. 325, 330-331, (1983). This immunity is even applied to public officials who knowingly give false testimony. *Briscoe*, 460 U.S. at 345. Public policy "requires that the paths which lead to the ascertainment of the truth should be left as free and unobstructed as possible."

Briscoe, 460 US. at 333, *citing Calkins v. Sumner*, 13 Wis. 193, 197 (Wis. 1860). Speech concerning public affairs, such as testimony, is more than self-expression; it is the essence of self-government. "Accordingly, the [United States Supreme] Court has frequently reaffirmed that speech on public issues occupies the 'highest rung of the hierarchy of First Amendment values,' and is entitled to special protection." *Connick v. Myers*, 461 U.S. 138, 145 (1983) *quoting NAACP v. Clairborn Hardware Co.*, 458 U.S. 886, 913 (1982), and *Carey v. Brown*, 477 U.S. 455, 467 (1980).

"In the last few decades, federal courts have afforded additional protection to witnesses who are employed by the government, concluding that truthful testimony is protected by the First Amendment and that a government employee may **not** be fired or subjected to other adverse action as a result of such testimony." *Worrell*, 219 F.3d at 1204-1205 (emphasis added). *See also Melton v. City of Oklahoma City*, 879 F.2d 706, 714 (10th Cir. 1989), *vacated on other grounds*, 928 F.2d 920 (10th Cir. 1991) (*en banc*). These decisions are particular applications of the "modern unconstitutional conditions doctrine," which holds that the "government 'may not deny a benefit to a person on a basis that infringes his constitutionally protected ... freedom of speech' even if he has no entitlement to that benefit." *Board of County Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996), *quoting Perry v. Sindermann*, 408 U.S. 593, 597 (1972).

Pursuant to the modern unconstitutional conditions doctrine, the Oklahoma Supreme Court should have reversed the denial of the benefit of unemployment compensation to Petitioner because of her courtroom testimony. For the Oklahoma Supreme Court to affirm the denial of Petitioner's unemployment benefits, it infringes upon her constitutionally protected freedom of speech. *See Umbehr*, 518 U.S. at 674.

The denial of Petitioner's unemployment benefits, as a result of her testimony, constitutes "other adverse action" under *Worrell.* "[A]ny form of official retaliation for exercising one's freedom of speech, including prosecution, threatened prosecution, bad faith investigation and legal harassment, constitutes an infringement of that freedom." *Worrell,* 219 F.3d at 1212.

In *Worrell*, the Tenth Circuit ruled that the plaintiff had a First Amendment right to express his opinion in the form of testimony. The court stated:

> The goal of our criminal justice system is to arrive at the truth and the interest of the parties in the case are furthered by witnesses who provide testimony to assist the trier of fact, Mr. Worrell's testimony is thus entitled to heightened protection under our precedent.

Worrell, 219 F.3d at 1209. As applied to the instant case, because Petitioner provided testimony to assist the trier of fact, her opinions in the referenced criminal cases where she testified are entitled to "heightened protection." Consequently, speech in the form of testimony is constitutionally protected as a matter of law. *Copp v. Unified School Dist. No. 501*, 882 F.2d 1547, 1550 (10th Cir. 1989).

This Court has recognized that constitutional violations may arise from the deterrent or chilling effect of governmental efforts that fall short of a direct prohibition against the exercise of First Amendment rights. *Umbehr*, 518 U.S. at 674. Clearly, the Oklahoma Supreme Court's opinion denying unemployment benefits due to Petitioner's courtroom testimony has a deterrent and chilling effect on government employees summoned to testify. The Oklahoma Supreme Court's denial of Petitioner's unemployment benefits would violate government employees'

First Amendment constitutional right to testify.

It is important to remember that the two cases cited by the Oklahoma Supreme Court where Petitioner testified as an expert witness, her opinion testimony was subjected to various "truth-finding safeguards of the judicial process" that decreased the likelihood that perjured testimony would significantly harm or alter a just outcome of the trial. At trial, witnesses must take an oath, are subjected to cross examination, and are scrutinized for credibility by the trier of fact. *See Briscoe*, 460 U.S. at 344-345. The witness may also be prosecuted subsequently for perjury. *Briscoe*, 460 U.S. at 342. In the instant case, Petitioner never was prosecuted for perjury.

As applied to the instant case, it is reasonable to assume that Petitioner's testimony was subjected to the various truth-finding safeguards outlined above that are inherent in the judicial process. It was the criminal district court, and **not** the Oklahoma Supreme Court that was in a better position to evaluate the appropriateness of Petitioner's testimony and to penalize Petitioner using the "truth-finding safeguards of the judicial process." In none of the criminal cases where Petitioner testified as an expert witness was she penalized for her testimony. It constitutes a violation of First Amendment constitutional law for the Oklahoma Supreme Court to penalize Petitioner by finding misconduct based on her expert opinion testimony.

Strong public policy considerations support the reasons for protecting government employees' testimony.

> Absent such protection, employers seeking to silence truthful testimony could present employees with a difficult choice. "Employees

> could either testify truthfully and lose their job or could lie to the tribunal and protect their job security." Either choice would come at too high a price: "Those able to risk job security would suffer **state sponsored retaliation** for speaking the truth before a body entrusted with the task of discovering the truth." On the other hand, "[t]hose unwilling or unable to risk unemployment would scuttle the courts efforts to arrive at the truth." Affording constitutional protection to the truthful testimony of public employees protects both employees interest in free expression and the judicial systems interest in arriving at the truth.

Worrell, 219 F.3d at 1205, *quoting Johnston v. Harris County Flood Control Dist.*, 869 F.2d 1565 (5th Cir. 1989) (emphasis added). Because she exercised her First Amendment right to testify as an expert witness and expressed her opinion in a criminal trial, Petitioner, a former government employee, has suffered **state sponsored retaliation** from the Oklahoma Supreme Court. "Plainly it would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980).

Pursuant to Oklahoma Supreme Court precedent, the Oklahoma Supreme Court is constitutionally disqualified from penalizing Petitioner for her protected speech in the form of testimony. Because she exercised her constitutionally protected right to testify in criminal trials, the Oklahoma Supreme Court, in its opinion regarding Petitioner, denied her a government benefit. This result is "absolutely inimical to the principles of

the First Amendment. In the realm of protecting speech, the government is constitutionally disqualified from dictating the subject about which persons may speak and the speakers who may address a public issue." *Oklahoma Bar Ass'n v. Porter*, 1988 OK 114, ¶ 20, 766 P.2d 958, 967. This Court has even stated that a fundamental principle of the criminal court system is that "the *jury* is the lie detector." *United States v. Scheffer*, 523 U.S. 303, 313 (1998). In determining the weight and credibility of witness testimony, it has been held that "part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men." *Scheffer*, 523 U.S. at 313 *quoting Aetna Life Ins. Co. v. Ward*, 140 U.S. 76, 88 (1891).

Moreover, the Oklahoma Supreme Court's opinion fails to take into account rights other than the right of Petitioner. "The counterpoint to the right to speak is the right of the listener"—in this case, that would be the judge, the jury, and the public—in listening to the Petitioner's opinion testimony. *Porter*, 1988 OK 144, ¶ 21. "The First Amendment goes beyond protection of the press and individual self-expression to prohibit the government from limiting the stock of information from which the members of the public may draw." *First Nat'l Bank of Boston v. Belloti*, 435 U.S. 765 (1978). "The concomitant right to receive information has been referred to as the freedom to listen. The freedom of speech necessarily protects the right to receive that information." *Martin v. City of Struthers*, 319 U.S. 141 (1943). As applied to the instant case, foreclosing the right of Petitioner to testify in a criminal trial is not only a burden on her First Amendment right to testify, but is also a burden upon the judge, the jury, and the public's First Amendment right to hear what she has to say. In the instant case, the speaker is an expert witness in contact with the judicial system. If the Oklahoma Supreme Court opinion is

applied to the expressive activity of witness testimony, it clearly strikes at the center of the concerns of the First Amendment freedoms by prohibiting expert witness testimony merely because the Oklahoma Supreme Court disagrees with its content. In so doing, the Oklahoma Supreme Court would directly inhibit the public's right to receive this information from those under ordinary circumstances are most calculated to be intimately familiar with this aspect of the government process. That is, the entire judicial system — which includes the judge, the jury, the prosecutors, the defense attorneys, the criminal defendants, the witnesses, and the public — was entitled to hear the Petitioner's testimony uninhibited by the fear that she would lose her unemployment benefits if the content of her testimony displeased the Oklahoma Supreme Court. It can only be concluded that the First Amendment is clearly offended by such a restriction on the summoned testimony of an expert witness in a criminal trial. The Oklahoma Supreme Court's opinion denied unemployment benefits due to such testimony. Thus, utilization of unemployment benefits to penalize the speech here in question is a significant impairment of First Amendment rights.

The inappropriate or controversial character of a statement is irrelevant to the question of whether it deals with a matter of public concern. "'[D]ebate on public issues should be uninhibited, robust, and wide open, and ... may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" *Rankin v. McPherson*, 483 U.S. 378, 388 (1987) *quoting New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). As applied to the instant case, Petitioner's expert testimony in the criminal trials, relied upon by the Oklahoma Supreme Court to deny her unemployment benefits, dealt with maters of public concern and enjoyed heightened protection under abundant Tenth Circuit precedent. *See Worrell*, 219 F.3d at 1209; *Lytle v. City of Haysville* , 138

F.3d 857, 867 (10th Cir. 1998); and *Melton*, 879 F.2d at 714. Therefore, pursuant to *Rankin*, the Oklahoma Supreme Court's alleged improper or inaccurate characterization of Petitioner's testimony is irrelevant. Because "[d]iscontent over the subject matter to which the protected speech relates, ... does not render that speech itself disruptive." *Dooley v. City of Philadelphia*, 153 F. Supp. 2d 628, 650 & n.22 (E.D. Pa 2001). In other words, the Oklahoma Supreme Court is **not** permitted to deny the Petitioner unemployment compensation merely because it disagrees with the **content** of her courtroom testimony. "This concern with limiting what subjects may be spoken to by which speakers is absolutely inimical to the principles of the First Amendment. In the realm of protecting speech, the government is constitutionally disqualified from dictating the subject about when persons may speak and the speakers who may address a public issue." *Bellotti*, 435 U.S. at 785. "[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." (Internal citations omitted.) "To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought free from government censorship." *Police Department of the City of Chicago v. Mosley*, 408 U.S. 92, 95-96 (1972). For the Oklahoma Supreme Court to deny Petitioner's unemployment benefits — because she expressed her opinion while testifying as an expert witness in a court of law — constitutes "government censorship" and violates this Nation's most sacred freedom as protected by the United States Constitution: the freedom of expression. Neither of the two cases cited by the Oklahoma Supreme Court reveal that the Petitioner made knowingly or recklessly false statements. In each case, Petitioner merely stated her opinion in response to questions directed at her. Specifically, the Oklahoma Supreme Court opinion states, "[c]learly, Gilchrist

did not satisfy that standard when she testified in *Mitchell* that the DNA evidence was 'inconclusive,' despite having been told by the FBI chemist that the DNA was *not* Mitchell's." *Gilchrist*, 94 P.3d 72, 2004 OK 47, ¶ 9. However, in *Mitchell*, the Petitioner gave her expert opinion in response to the question as follows:

> Q: (By Mr. Deason) Ms. Gilchrist do you know whether the FBI DNA analysis was able to associate any of this evidence to the Defendant in this case?
> A: No, they were not able to.
> Q: Would it be correct to say the results were inconclusive?
> A: Yes.

On cross examination, Petitioner testified:

> Q: You testified that this FBI report received from Michael Vick at the FBI DNA lab was inconclusive, right?
> A: In reference to your client, yes.

Mitchell, 150 F. Supp. 2d. at 1233. The Petitioner was **not** asked to explain the reason(s) for her expert opinion that the FBI report was inconclusive, by either the prosecution or the defense. Clearly, the Petitioner's expert opinion testimony was not knowingly or recklessly false. "If the First Amendment protects a public employee from ... what he has said, it must also protect him from ... what he believes." *Branti v. Finkel*, 445 U.S. 507, 515 (1980).

Under the First Amendment, there is no such thing as a

false idea. "However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Welch,* 418 U.S. 323, 340-341 (1974). Ironically, in the criminal trials in which Petitioner testified as an expert witness, her opinion testimony was authorized by, and not penalized by, those courts. However, those same ideas and opinions were penalized by the Oklahoma Supreme Court.

This Court has expressly held that "absent proof of false statements knowingly or recklessly made," the "right to speak on issues of public importance, may **not** furnish the basis for dismissal from public employment." *Pickering v. Board of Educ.*, 391 U.S. 563, 574 (1968) (emphasis added). In *Branti*, this Court stated that a government employee:

> [C]annot be dismissed for engaging in constitutionally protected speech, the court had stated: For at least a quarter century, this court has made clear that even though a person has "no right" to a valuable government benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not rely. **It may not deny a benefit to a person on a basis that infringes his constitutionally protected interest — especially, his interest in freedom of speech.** For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to produce a result which it could not command directly. Such

> interference with constitutional rights is impermissible.

Branti, 445 U.S. at 514-515, *quoting Speiser v. Randall*, 357 U.S. 513, 526 (1958) (emphasis added). *See also Rutan v. Republican Party of Illinois*, 497 U.S. 62, 72 (1990) (same quote). Clearly, the Oklahoma Supreme Court's opinion finding misconduct based on Petitioner engaging in constitutionally protected speech denied her the government benefit of unemployment compensation because of her constitutionally protected speech in the form of expert witness testimony.

Incredibly, and in open defiance of the above referenced First Amendment constitutional principles, the Oklahoma Supreme Court's opinion actually states:

> Gilchrist cites several opinions, which she claims support her contention that her constitutionally protected right to free speech was violated because she was fired as a result of her testimony in criminal prosecutions.[3] We have found nothing in the cases Gilchrist cites, though, which would convince us that her constitutional rights were violated here. In most of those cases persons who had been accused of crimes sued parties who had been witnesses for the prosecution for money damages on the ground that those defendants' testimony had deprived the convicted plaintiffs of their civil rights. Further, in none of those opinions was the testimony at issue judicially determined to have been false or misleading.
>
> Fn.3. In support of this proposition Gilchrist

> cites, among other opinions. *Williams v. Hepting*, 844 F.2d 138, 141 (3d Cir. 1988); *Worrell v. Henry*, 219 F.3d 1197, 1204 (10th Cir. 2000); and *Briscoe v. LaHue*, 460 U.S. 325, 330-331 (1983).

Gilchrist, 94 P.3d 72, 2004 OK 47, ¶ 12 & n. 3. Because the First Amendment protects the right to testify at trial, this statement, on its face, constitutes an error of law. To permit the Oklahoma Supreme Court to, in effect, substantially regulate an employee's witness testimony, would violate a fundamental principal of liberty and justice which lies at the base of our civil and political institutions. *Hebert v. Louisiana*, 272 U.S. 312 (1926). Furthermore, First Amendment speech in the from of testimony is constitutionally protected as a matter of law. *Copp*, 882 F.2d at 1550. This Court, interpreting the United States Constitution via the First Amendment, stated that it is clearly established that a State may not condition public employment on grounds that infringe on its employees' constitutionally protected right to freedom of expression. *Rankin*, 483 U.S. at 383; *Connick*, 461 U.S. at 142; and *Pickering*, 391 U.S. at 572-574.

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

The First Amendment Constitutional right to testify must be protected so as to ensure that testimony in court would be free, uninhibited, robust, and wide open, even if it includes testimony that judges disagree with, criticize, or believe to be inconsistent with the standards of the court. The criticisms of this testimony is not the test established by the United States Supreme Court in *Pickering*, 391 U.S. at 574, wherein this Court expressly held that "absent proof of false statements knowingly or recklessly made," the "right to speak on issues of

public importance, may not furnish the basis for" a denial of a public benefit.[1]

1. This is a case of first impression. Although this Court has held that the First Amendment protects First Amendment expression unless it is shown to be knowingly and recklessly false through *Pickering*, the principle has not been applied to First Amendment expression in the form of expert opinion testimony where the witness is not testifying to facts, but is rendering his or her expert opinion.

Although this Court has held that government officials who give testimony in court — even those who testify falsely — are immune from suit, through *Briscoe*, the principle has not been applied to government officials who give expert opinion testimony that is later criticized as being false; and whether the government entity can deprive the government employee who gave expert opinion testimony, of governmental benefits.

The First Amendment principles of both *Pickering* and *Briscoe* need to be updated and applied to expert opinion testimony so as to fashion a test to determine when opinion testimony is not protected by the First Amendment and when opinion testimony can be cited as a reason to deny the expert witness government benefits. This Court has repeatedly stated that a government official cannot be deprived of a government

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[1] As stated *supra*, there are plenty of judicial safeguards already built into the system that are available to sanction inappropriate and false testimony, up to, and including perjury. When warranted, these safeguards should be implemented, rather than retaliating against testimony merely because the court is displeased with or disagrees with the content of the expert's opinion testimony.

benefit for exercising rights protected by the First Amendment. *Connick*, and *Rankin*. However, this doctrine has **not** been applied specifically to the exercise of First Amendment rights for expert opinion testimony. Furthermore, this Court has not applied the principles of *Pickering* to either courtroom testimony or expert opinion testimony.

Federal Circuit courts have held that only truthful testimony enjoys First Amendment protection, but what constitutes truthful testimony especially regarding expert opinion testimony has not been delineated. *Worrell*, *supra*, *Pro v. Donatucci*, 81 F.3d 1283 (3d Cir. 1996), and *Smith v. Hightower*, 693 F.2d 359 (5th Cir. 1982). In light of the above precedent, the Oklahoma Supreme Court opinion in this case appears contrary to this Court's First Amendment jurisprudence.

2. Even if expert witness testimony is knowingly false, it enjoys immunity from the denial of State public benefits, similar to the immunity enjoyed when applied to public officials as applied in *Briscoe*, 460 U.S. at 330-331.

A. The immunity witnesses enjoy should be expressly extended to expert witness testimony. This Court should develop a test to determine under what circumstances expert witness testimony enjoys First Amendment immunity.

3. The Oklahoma Supreme Court decision in this case is incorrect.

A. The Oklahoma Supreme Court fails to recognize the First Amendment right to testify and express one's beliefs in the form of expert opinion testimony without being deprived of a government benefit for doing so.

B. The Oklahoma Supreme Court fails to apply the *Pickering* test to the expert witness testimony of the Petitioner. Instead, the Oklahoma Supreme Court states that it was "judicial determination" that Petitioner's testimony was false. If one applies the *Pickering* test to Petitioner's expert opinion testimony in *Mitchell* and *McCarty*, then it is apparent that her expert opinions were not knowingly or recklessly false.

C. This Court's guidance is needed to apply a *Pickering*-type test to expert opinion testimony.

CONCLUSION

For the above and foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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September 2004

Certificate of Delivery

This is to certify that on the 13th day of September, 2004, a true and correct copy of the foregoing Petition for Writ of Certiorari has been delivered, either by hand delivery, or by First Class, United States mail, with postage prepaid thereon, to:

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//s// Melvin C. Hall
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